

UNAPPROVED AND SUBJECT TO CHANGE
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

June 7, 2002

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:38 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox, and Gordana Swanson were present.

Chairman Getman noted that staff was conducting an experiment in a telephone call-in system which would allow persons to call in and listen to the FPPC meetings over a toll-free telephone line. If the new system works, staff hopes to have it available, to a limited number of persons, by the July FPPC meeting.

Item #1. Approval of the Minutes of the May 9 and 10, 2002 Commission Meeting.

The minutes of the May 9 and 10, 2002 Commission meeting were distributed to the Commission and made available to the public.

There being no objection the minutes were approved.

Item #2. Public Comment.

There was no public comment.

Item #3. In re Hanko (O-02-88) – Treatment of Bonus Payments Under Section 87103(c).

Commission Counsel Holly Armstrong explained that the opinion request asked whether a customer of an official's employer becomes a source of income to the public official as a result of a bonus paid to the public official by the public official's employer when that bonus is based on the volume of product purchased by the customer and the amount of the bonus can be traced to the customer. She explained that the issue involved step 3 of the 8-step conflict of interest analysis.

Ms. Armstrong discussed the facts of the case as outlined in the staff memorandum. She noted that Director Hanko, while serving as a director of the Peninsula Health Care District (District), would be disqualified from participating in a decision involving Mills Peninsula Health System (MPHS) if it was determined that MPHS was a source of income because of a bonus Director Hanko received from her employer, Baxter Health Care Corporation (Baxter). Staff concluded that when portions of a bonus that are equal to or in excess of \$500 can be traced to a particular client or customer, the customer will be considered a source of income to the public official.

Ms. Armstrong asked that the Commission ratify the advice given in the *Brown* advice letter #A-01-286 and in the *Coffe* advice letter #A-01-064 because both letters encompass the complete response to the question. Staff recommended that the Commission either (1) decline to issue an opinion, or (2) issue an opinion concluding that bonus payments based on volume sales, will be attributed to the customer when the public official had direct contact with the customer at issue and the bonus payment was triggered by sales to or purchases by that customer.

Roger A. Brown, representing Peninsula Health Care District and requestor of the opinion, stated that staff's conclusion that a customer of a customer is a disqualifying source of income to Director Hanco was contrary to law. He explained that the opinion request addressed both the narrow question of Director Hanco's particular situation, and general policy questions that would affect many more public officials and agency lawyers.

Mr. Brown discussed the questions posed in the opinion request. The only question that the Commission needed to confront, however, was the question of who makes the rules. He contended that the Commission makes the rules, and that the only rule that applied to Director Hanco's fact situation is in regulation 18703.3(a). That rule provides that the source of income to the public official is the person from whom they receive the income. Director Hanco received the bonus from Baxter, not MPHS.

Mr. Brown emphasized that Director Hanco was an unpaid elected director of the District. The bonus program of Baxter was discretionary, and Director Hanco had absolutely no right to the bonus. MPHS purchased Baxter products from independent third party wholesalers, not from Baxter. Consequently, MPHS is three steps removed from the public official and has no influence over the Baxter bonuses. He stated that doctors, not MPHS, make the decisions to prescribe the products. Staff advised Director Hanco that she could not participate in the most important and serious decisions facing the District, and Director Hanco has been recusing herself from those decisions for over a year.

Mr. Brown asked the Commission to overrule staff advice and permit Director Hanco to participate in the decisions. Government Code section 87103(c) does not define "source of income," and the plain meaning of the statute is that the person who pays the money is the source. The Commission defined "source of income," in regulation 18703.3(a), which restates the general rule. The only two exceptions to that rule do not apply in this situation.

Mr. Brown believed that prior advice letters relied on by staff were erroneous. The regulation provided all necessary guidance to resolve the questions. Even if that advice were presumed to be correct, the staff did not follow that advice but extended it further. Mr. Brown discussed the *Larsen* and *Anaforian* advice letters relied on by staff, noting that they require that the public official have a right to the payment and that the source of the payment have control of the payment. Neither of those elements are met in Director Hanco's case. Traceability seemed to be the key important issue in this case, but was not considered in *Larsen*.

Mr. Brown discussed the *Kuperberg* and *Dorsey* advice letters, noting that direction and control appeared to be the pivotal issues considered by staff. Staff was now asserting that traceability was more important than direction and control. Mr. Brown pointed out that staff recommended

that some limiting principle be imposed on the term "source of income" to prevent its "expansion beyond reasonable boundaries," in the *Dorsey* advice letter. He contended that the staff advice in the *Hanko* letter failed to impose any limiting principle on "source of income" and has become an ad hoc exercise which has expanded the concept well beyond any reasonable boundaries. He noted that staff also asserted that the fact that the payment had been received made consideration of its discretionary nature unnecessary. However, until the income has been received, there is no income to consider, therefore staff's assertion was wrong. The source of income should be considered, and not the receipt of the income. Mr. Brown asked the Commissioners to consider that bonuses are sometimes keyed to productivity or profit, and questioned whether any of them would have thought that a bonus they received was from a client of a firm they worked for, or a customer of a client of their firm.

Mr. Brown noted that the statute refers to "source of income," and the regulation defines "source of income" as the person from whom a payment is received. The advice letters are the only source of a purported rule that the staff asserts.

Chairman Getman stated that it may not matter that Director Hanko does not have an automatic right to the bonus because the bonus was paid. She asked whether Director Hanko had ever not received the bonus.

Mr. Brown responded that Baxter widely varies the amounts of the bonuses, and has the discretion to do whatever they want with the bonuses, including canceling them.

Terilyn Hanko appeared and stated that she would have to research her W-2 forms to answer Chairman Getman's questions. She stated that there may have been a year in which she did not receive a bonus, and that the amounts of the bonuses varied widely.

Mr. Brown stated that it was difficult to report the amount of the bonuses because it could require that Ms. Hanko report much more than the Commission needs to know in order to resolve the opinion request. That could tread on her rights to privacy.

Commissioner Swanson responded that the Commission considers various matters and is very concerned about threshold amounts. She noted that this could be a precedent setting matter and asked what the maximum bonus would be.

Ms. Hanko stated that her income is looked at collectively, and that it is difficult to separate the bonuses from the salary. She believed that it could be assumed that, in any given year, the bonus could potentially meet the \$500 threshold. MPHS is a very small percentage of the facilities that she works with. She noted that a lot of the sales are based on the buying groups that hospitals affiliate themselves with, and that the buying groups determine much of the nonproprietary products to be purchased. Baxter does quite a bit of business in those nonproprietary products. It has a special group of people who deal with the buying groups, and Ms. Hanko has no control over that. If Baxter has a contract during a year with a Sutter facility such as MPHS, there can be quite a bit of business. If there is no contract, the amount of business would be smaller because it would only be sales of proprietary products (those that Baxter makes). The hospitals owned by Sutter involve less than 10% of the facilities that she worked with and the income

would be commensurate with that. She was uncomfortable with identifying the total amount of the bonuses because she had already disclosed a lot of information. She noted that she served as a director for the District on a voluntary basis as a way to give back to her community. She explained that she gave more information than necessary already, and believed that income was a private matter.

In response to a question, Ms. Hanco stated that she marketed to physicians and nurses, educating them about the products. If there is a contract with a facility, she meets with the buyers and pharmacy directors to discuss compliance issues with the contract that has already been put in place. When Baxter loses business that is contractually theirs to competitors, her job includes offering extra incentives to the facility to stay on contract. Those contracts do specify a certain number of products that will be purchased, but are not very well enforced.

Chairman Getman stated that most public officials do not like telling the public their personal financial information. However, Ms. Hanco was asking the Commission to grant her legal immunity by assuming on faith that she does not have a conflict of interest. In order to grant the legal immunity, the Commission must be sure that a conflict does not exist.

Ms. Hanco stated that the issue was whether she made more than \$500 from the facility that the District is working with to develop a 50-year \$350,000,000 contract that will dramatically affect the health care of her community. The formula her company uses to calculate the bonuses is very complicated, but Ms. Hanco did her best to compute the bonus amount because she wanted to follow the rules. She asked that the Commission do the same. She did not believe that she had a conflict because her company, not MPHS, controls her income.

In response to a question, Mr. Brown stated that he had been retained by the District, and that Director Hanco authorized him to speak on her behalf.

Chairman Getman stated that bonuses given in a law firm are often based on the number of hours an associate works, and questioned whether the clients would be considered the source of income.

Commissioner Swanson stated that there is a difference between a bonus paid to an associate at a law firm and a bonus paid to a public official.

Commissioner Knox stated that the Chairman's question assumes that the associate in the law firm also serves as a public official.

Ms. Armstrong stated that if the bonus were dependent on the hours worked for the entire year, the associate would not be able to trace that bonus to that last case.

Chairman Getman noted that most attorneys could state with absolute certainty the number of hours worked for each client that year.

Commissioner Knox observed that he has to report what portion of his income is attributable to clients, and that the same formula could be used for the attorney's scenario.

Chairman Getman agreed, and noted that she did not believe that the statute was an impediment because there are other circumstances where the statute looks beyond the initial payor. She was concerned, however, that there were no limiting factors.

Ms. Armstrong responded that an associate's job in a law firm would not specifically be to bring in more business.

Chairman Getman noted that the associate's job would be to work as many hours as possible on all the business that is there.

Ms. Armstrong agreed. She added that the associate is supposed to do as much marketing as possible, but that the incentive bonus is based on the volume of business that you bring in.

Chairman Getman disagreed, noting that the associate bonus may be based solely on the volume of hours that the associate bills.

Commissioner Downey stated that the largest bonus he received as an associate was as a result of bringing in new business.

Chairman Getman noted that some law firms may structure bonuses considering both the hours worked and the new business brought in to the firm.

Commissioner Knox stated that he was concerned about attribution to a customer of a customer.

Ms. Menchaca stated that staff has received questions regarding bonuses from law firms, and that staff has looked at how the bonus payment is structured in their responses. Staff has found that the structure of the bonuses varies widely and could require that other factors, such as control, be considered. She agreed that staff should not make the rules, and noted that staff recommended that the Commission consider the matter.

Chairman Getman stated that if the Commission issues an opinion with the guidelines suggested in the staff memorandum, then the bonus would have to be attributed to the client in the law firm scenario because there would not be any distinction.

Commissioner Knox questioned the distinction between salary and commission for these purposes. He suggested that, if Ms. Hanko is required to attribute the bonus to the customers, she would then be required to attribute her salary too.

Ms. Menchaca agreed.

Commissioner Knox stated that the PRA was supposed to make politics and public policy more accessible. He was concerned that moving to a "second-layer" attribution would discourage people from accepting positions of responsibility.

Chairman Getman agreed, noting that the public official would have to guess what is "like a source of income," and that it is too hard to ask a public official to do that. She did not know how a limiting principle would work.

Commissioner Downey stated that Ms. Hanco was being asked to participate in a decision which affected a company that she had direct dealings with. She knew, if the company purchased her employer's product, it would probably enhance her income through the bonus program. It was true that Baxter made the ultimate decision about the bonus, but Ms. Hanco had the expectation that a bonus would be received. He believed that the PRA was designed to discourage people from participating in decisions that will impact their personal finances. He initially believed that she ought to recuse herself. He agreed with staff's determination that the public official must have direct dealings with the business, as Ms. Hanco did, in order for a conflict to exist. The income has to be tied to that business, and she would have to be able to trace that bonus income to the business entity. He was not troubled by the workability of the rule.

Commissioner Downey was not convinced with the analogy of the law firm because there would be different clients each year. In this case, if MPHS is not a client, there would not be a ready replacement for that business. If a bonus is based on procuring a client for a law firm it would be more analogous, and the attorney should not make a decision regarding a client that the attorney brought into his or her law firm.

Commissioner Swanson commended Ms. Hanco for wishing to serve her community. However, she did not believe that the Commission should make its determination based on good faith and with the understanding that the money was not an issue. If Ms. Hanco did not receive the money, she would not be before the Commission. Ms. Hanco's vote was very important for the benefit of her industry. She did not believe that a precedent should be set allowing someone working in an industry to vote on matters that affect that industry. She supported the staff recommendation of ratifying the two advice letters. Even though it may be difficult to find out the source of monies, it is the FPPC's job to do so to protect the public.

Chairman Getman was concerned that the lack of limiting factors could create problems. She did not believe that an official should always have to look beyond the person who paid the bonus for attribution purposes.

Commissioner Knox noted that, if the Commission adopts the staff recommendation, it would require every volunteer board member to look at the source of the source of their salary.

Commissioner Downey disagreed from a practical standpoint. If a board member recognizes a name because they have had direct contact with that entity before, they should investigate to find out whether that name is a source of their income.

Commissioner Knox stated that if Ms. Hanco's direct contact with the doctors and nurses of MPHS did not exist, the economics of the situation would still disqualify her. He did not believe that direct contact was required for that disqualification.

Ms. Armstrong stated that contact should be a factor. In Ms. Hanco's case, direct contact was made. Without that contact, there might not be an incentive for the public official to take care of the entity. She saw that as a distinction between Ms. Hanco's case and the law firm scenario. An associate may spend a lot of time on a particular case but never meet the client.

Chairman Getman stated that every attorney had direct contact with the clients in her last law firm job.

Commissioner Swanson was troubled by the secrecy of the bonus in this request. She noted that if income is dependent upon the bonus because it is part of a total compensation package, it is not a bonus, it is income. In Ms. Hanco's case, the Commission did not really know whether it was a bonus or income. She believed that staff acted appropriately in their recommendation, and did not want to rule in favor of something that will set a precedent for time to come.

Commissioner Swanson moved that the Commission approve the two advice letters issued by staff.

In response to a question, Ms. Armstrong clarified that the advice letters were the two that were sent regarding Ms. Hanco.

Commissioner Downey seconded the motion.

Commissioner Knox spoke against the motion. He believed that using elements such as the knowledge of the source of income or a factor related to direct contact to define "source of income," would become speculative and more difficult to enforce. He did not agree that there was secrecy, noting that Ms. Hanco conceded that her income exceeded the \$500 threshold and that the Commission did not need to know any more than that.

Chairman Getman stated that the bonus appeared to be structured more like a commission. Even though direct sales were not involved, Ms. Hanco came as close to a salesperson as anyone. The fact that the orders were placed through a third person after Ms. Hanco's marketing to the buyer was a distinction without a difference. She asked whether staff could look beyond the labels of "bonus" and "commission" and develop principles addressing when that type of payment would be considered a source of income. She was not comfortable with the staff recommendation because it needed to be more explicit. However, there was direct marketing by Ms. Hanco for the purpose of increasing product sales that resulted in Ms. Hanco making money.

Commissioner Swanson agreed that the distinction should be made. She stated that the particular request before the Commission involved a "bonus" that the Commission was not fully informed about.

Chairman Getman noted that the company referred to the bonus as a commission.

Mr. Brown responded that it did not fit the definition of a commission no matter how it was labeled.

Ms. Hanco stated that it is an incentive compensation.

In response to questions, Ms. Hanco stated that she was elected in November 2001 to a four-year term. The commission on which she serves has five directors. Three members of the commission have been suspended from negotiations because of potential conflicts of interest. At Baxter, there were several hundred people in the IV Systems Division Sales Force in Ms. Hanco's marketing area. Her particular division has 85 persons. Her bonus was based on the marketing efforts of just herself in her particular area.

Ms. Hanco stated that the patient population is a bigger factor in determining her bonus than the work she does in marketing. The number of people and the types of medical needs that they have will affect the sales much more than Ms. Hanco's marketing.

Chairman Getman questioned whether Ms. Hanco might urge the District to place the new facility in an area that would better serve a geriatric population, which would greatly benefit Baxter.

Ms. Hanco stated that she had no control over the demographics. The District's contract with Sutter is based on building a facility. They would not have oversight as to what services they offer the community. She wanted to negotiate the lease for the hospital. MPHS did not want the district to participate in decisions related to who the hospital will serve or what services the hospital will offer, but Ms. Hanco believed that the hospital should serve the district.

Ms. Hanco stated that she was elected because of her expertise in the medical field.

Chairman Getman made a substitute motion asking staff to draft an opinion that would conclude that a conflict exists, but would rely less on whether it is a bonus or a commission, and instead would come up with principles addressing when this type of payment would be a source of income and include clear principles defining when it would not be a source of income. She noted that she was not sure that it could be done in a manner that she would support.

Commissioner Downey seconded the motion.

Commissioner Swanson stated that it asks staff to issue an opinion on something that has nothing to do directly with the question before the Commission.

Chairman Getman responded that she was not comfortable ratifying the staff analysis in the letters because she did not believe it gave the proper guidance in other situations. She was not convinced that a conflict did not exist, but believed that a different analysis should be done to support it.

In response to a question, Chairman Getman stated that, if the Commission approved the substitute motion, Ms. Hanco would not be able to vote, but there would be a different interpretation than through the letters.

Commissioner Knox opposed the approach because it directed the staff to achieve a specified result, articulating principles that the Commission did not yet agree on.

Chairman Getman stated that two Commissioners agree on the principles outlined in the staff memo. She agreed on some of them, but believed that there should be additional limiting factors that would distinguish Ms. Hanko's situation from a law firm associate who bills hours on cases. Ms. Hanko's direct relationship between what she is doing and where her income comes from needed to be articulated. Even if articulated, Chairman Getman was not sure that they would work.

In response to a question, Ms. Menchaca stated that, if the Commission did not approve Commissioner Swanson's motion, there would be no advice to guide Ms. Hanko.

Mr. Brown suggested that the Commission provide staff with standards the Commission, as a matter of policy, should apply to this type of situation. If the Commission cannot agree on any course of action, the advice letters will stand on principles that the Commission cannot agree on. Public officials will not know what the rules are without some guidance from the Commission.

Mr. Brown believed that the staff advice should be superseded so it cannot control Ms. Hanko. The Commission should schedule hearings on regulations and hear testimony from other members of the public.

Commissioner Swanson suggested that the first motion be approached in two parts. First, the Commission should ratify in principle the spirit and intent of the action that staff took in the past by writing the two letters of advice. Secondly, the Commission should ask staff to return to the Commission an analysis outlined in Chairman Getman's motion, exploring the issues of bonus and compensation in the realm of the present regulations. Once that is resolved, an addendum should be sent to Mr. Brown and his client.

Commissioner Downey stated that the substitute motion would accomplish that. It shows that the Commission agrees that Ms. Hanko had a conflict. He agreed that the Commission should wait a month, but that Ms. Hanko should understand that the Commission believes that she has a conflict even though the decision will not be made for another month. The Commission should review the analysis to try to reach a consensus.

Commissioner Swanson stated that it was interesting that the case involved someone who wanted to serve the public and was duly elected, and because the Commission's duty was to eliminate conflicts and perceived conflicts, Ms. Hanko cannot participate on an already incapacitated board. The Commission should consider ways to eliminate those conflicts and still serve the public interest without discouraging well-meaning people from participating in the political process.

Ms. Menchaca requested that the Commission act on the staff's request with regard to the two letters. If the Commission chose to issue an opinion at the July meeting, they could at that time expressly rescind the advice letters. She was concerned that the public would not have more

information other than that the Commission generally believes that there is a conflict under the statute. The advice letters could stand for one more month.

Ms. Menchaca noted that staff could have approached the legal analysis in this matter in a number of different ways. They addressed the issue narrowly so it could be distinguished from other situations. She asked that the Commission provide additional guidance to the staff. If the Commission wanted staff to further analyze, under § 87103(c), when someone becomes a source, staff can look at issues more broadly. She agreed that the facts of this case seemed to show that the bonus looked more like commission income, and noted that the broader question of who is the source of that income would need to be explored.

Commissioner Knox agreed, noting that it is not fair to tell the staff to find a justification for the desired result.

Ms. Menchaca responded that the result and the analysis in the letters should stand for now. She noted that there are different ways and regulations that could have been used to come to the same result. Staff had not analyzed those because they were trying to narrow their response to the specific question posed with respect to bonus income. If staff looks at factors and principles, they may present other regulations in other areas that impact income, focused on the set of facts of this case, to present a bigger picture to the Commission. Ms. Menchaca presented examples of factors that might need to be considered.

Commissioner Knox stated that he supported having staff prepare another analysis, but did not support preordaining the result of the analysis. He suggested that the Commission should reject both motions. He recommended that staff prepare an analysis that considers the questions, particularly those related to attribution, the importance of direct contact and direct knowledge of where money is coming from, how rules are applied to salaries in addition to bonuses or commissions. He regretted that it would leave Ms. Hanco without an answer for another month, but did not think it was a debilitating drawback to the approach.

Chairman Getman agreed.

In response to a question, Chairman Getman stated that the Commission did not have to approve the advice letters this month. The letters would stand for another month.

Commissioner Swanson stated that if the intent of the Commission is to not allow Ms. Hanco to vote, and the only question is the issue of compensation versus bonus, then that portion of the concern could be addressed at the July meeting. At that time, the Commission could issue a letter to Ms. Hanco.

Chairman Getman stated that the safest route would be to let the letters stand for one more month to allow staff to return to the Commission with an approach that will address Commissioner Knox's concerns. She asked that staff also explore the definition of commission income. The regulation defines "commission income" for three specific types of people, and may need to include more than that.

Commissioner Knox stated that he supported Chairman Getman's suggestion. He noted his concern about "commission," as it relates to a specific transaction, as an implicit acknowledgment of the problems of attribution once a number of different transactions are considered part of a single source from which the commission is paid. He suspected that the end result would be the conclusion that Ms. Hanco did not have a conflict of interest.

In response to a question, Commissioner Knox stated that, in the exercise of prudence, Ms. Hanco should refrain from voting for a month.

Commissioner Swanson noted that Ms. Hanco should not have hope that she will be able to vote when the issue is settled.

Chairman Getman withdrew her substitute motion.

Commissioner Downey withdrew his second to the substitute motion.

Commissioners Downey and Swanson voted "aye" on Commissioner Swanson's motion. Commissioner Knox and Chairman Getman voted "no." The motion failed by a vote of 2-2.

Commissioner Swanson moved that the Commission concur with the decision of staff, and that a second letter clarifying and explaining the decisions in the advice letters be sent based on the Commission's approval, after the next meeting, and that the item be placed on the July agenda as it relates to the substitute motion.

In response to a question, Commissioner Swanson stated that her motion meant to have the Commission consider the item as part of the July agenda, and that the Commission form an opinion which will go out in the form of a letter to Ms. Hanco.

Chairman Getman would not second the motion because it would ratify the staff's advice.

There was no second to the motion.

Commissioner Knox moved that staff furnish the Commission with an analysis of Ms. Hanco's present position, and to take into account in the analysis the following factors: (1) What to do with the attribution issue (Counsel having informed the Commission that the District is a customer of a customer); (2) What to do with the salary versus bonuses or commissions issue (Whether the Commission should be reconsidering what constitutes a commission). Staff should provide a recommendation considering those factors and the considerations raised in Mr. Brown's letter as to whether Ms. Hanco has a conflict of interest.

Chairman Getman seconded the motion.

Commissioner Knox added to his motion that the staff analyze what role, if any, Director Hanco's knowledge of the source, or the source of the source of the income, should play in the analysis. Additionally, staff should explore what role, if any, the fact that she had direct contact with MPHS should play, versus situations where no contact or indirect contact was involved.

In response to a question, Commissioner Knox stated that his motion asked that staff prepare another memo with an analysis and recommendations, not a draft opinion.

Commissioner Downey summarized that the advice letters would be in effect for another month and that the Commission would revisit the issue using a different analysis. At that point, the Commission could end the matter or decide to issue an opinion letter the following month.

Commissioner Knox agreed, noting that, at that point, the advice letters would at least be tracking principles that a majority of the Commission agreed on.

Commissioner Swanson read the question initially posed to the Commission. She stated that it was a simple clear question and that staff provided a clear answer.

Chairman Getman pointed out that the Commission has since learned that the payment was more of a commission than a bonus, and that it was being tracked back to a customer of a customer.

Commissioner Swanson noted that the Commission had no idea how much money was involved in the bonus, other than it being more than \$500, and believed that presented a problem.

Commissioner Downey stated that the Commission was assuming that the threshold had been met.

Commissioner Knox noted that, for the purposes of the analysis, it made no difference how much the bonus was as long as the threshold was met.

Chairman Getman called for a vote on the motion.

Commissioners Downey, Swanson, Knox and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

In response to a question, Chairman Getman stated that Mr. Brown can comment on the staff memorandum for the July meeting within the normal comment period. It would not be an opinion request.

The Commission took a break at 11:30 a.m.

The Commission reconvened at 11:38 a.m.

Item #5. Proposition 34 Regulations: Emergency Adoption of Proposed Regulation 18572.2, Interpreting Section 85702, Defining "Acceptance of Contributions from A Lobbyist".

Staff Counsel Scott Tocher explained that the Commission adopted regulation 18572 at the May, 2002 Commission meeting. The Commission directed staff to analyze what the word "from"

means in the clause, "an elected state official or candidate may not accept contributions from a lobbyist."

Mr. Tocher reported that staff studied the history of the statute and the constitutional rules and had not reached a consensus regarding how the Commission should interpret the statute. However, staff concluded that nothing in the statute's history, the history of prior interpretations of similar statutes, nor in constitutional protections would prohibit the Commission from applying the contribution ban to a lobbyist's delivery of contributions.

Mr. Tocher explained that staff presented 2 versions of a regulation. Version 1 would apply the ban to a lobbyist's delivery of contributions to an elected state officer or candidate. Version 2 embodies the rejection of Version 1.

In response to a question, Mr. Tocher stated that he was confident there was no authority for a constitutional right to deliver a contribution for someone else. Concerns that are voiced in other contexts are based on completely different concerns, such as the rights of the contributor or a lobbyist individually. Circumstances not involving expressive rights, such as certain reporting requirements, become important where they inflict an unbearable or intolerable burden. The delivery of a contribution should not come close to meeting those burdens.

In response to a question, Mr. Tocher stated there was a closer constitutional issue in prohibiting the lobbyist from contributing his or her own personal funds, and it was subject to a more narrow construction. There is case law about the parameters of regulating that conduct.

Commissioner Downey suggested adding the word "officeholder" to Version 1 of the proposed regulation, on line 9 and also substituting the word "officeholder" for the word "officer" on line 13.

Mr. Tocher agreed.

Tom Hiltachk, on behalf of the Institute of Governmental Advocates (IGA) commented that the language pertaining to contribution limits provides that a candidate or officeholder cannot receive and a person shall not make a contribution of over \$3,000. It does not matter how that contribution gets from the donor to the candidate. If the Commission adopts Version 1, it would be eliminating one side of the prohibition. A candidate could accept a contribution that came from the personal bank account of a lobbyist as long as the lobbyist did not deliver it.

Chairman Getman disagreed. She believed that Version 1 of the proposed regulation 18572.2(b)(2) made clear that cannot be done.

Mr. Hiltachk stated it would put a burden on the candidates by requiring that they know that the contribution was being delivered by a lobbyist.

Chairman Getman noted it is unlikely the candidate would not know that the contribution was being delivered by a lobbyist because the lobbyist was being paid to influence the decision-making of the individual.

Mr. Hiltachk stated he was talking about the receipt of a contribution that is from the personal funds of a lobbyist as long as it is not transmitted by the lobbyist.

Commissioner Downey summarized the question as whether, if a lobbyist writes a check to an official and mails it to the official, the official would be considered to have violated the statute if the official accepted the funds.

Mr. Hiltachk agreed, and stated that the official would not violate the statute under Version 1, but would violate the statute under Version 2.

Commissioner Downey noted that, under Version 1, the lobbyist would still be the transmitter of the contribution, and thus the official would be violating the statute.

Mr. Hiltachk stated that there is no definition of "transmission."

Commissioner Downey suggested that the word "from" could be equated with "transmitted by," and noted that putting the contribution in the mailbox would be a way of transmitting.

Mr. Hiltachk questioned how the official would know who put the contribution in the mailbox.

Chairman Getman noted that the lobbyist's name would be on the check.

Mr. Hiltachk pointed out that the Commission adopted a regulation at its last meeting providing that certain business entities are prohibited from making contributions. He questioned how a candidate would know that a corporation is funded primarily by a lobbyist.

Chairman Getman responded that there was a provision in the draft regulation that would allow the official to return the contribution without violating the law. She noted that there is no way for the lobbyist to benefit from making the contribution unless the person who receives the contribution knows that it came from the lobbyist. She questioned why it mattered that the lobbyist be allowed to sit in a room with a public official and hand over someone's check.

Mr. Hiltachk responded that he saw nothing wrong with that situation. He explained that, in many cases, it is done because it is practical. He provided a hypothetical example involving an executive director of a trade association who is also the association's lobbyist and works alone. If the association's PAC makes a contribution, he questioned how the lobbyist would deliver the check to the official.

Chairman Getman responded that the check could be written by the organization's headquarters and mailed directly to the official.

Mr. Hiltachk responded that it would work in some situations, but that the job is often done by the corporation's government relations director, who is also a lobbyist. He noted that he advised his clients not to engage in the type of conduct that concerned the Chairman.

Chairman Getman responded that if clients do it anyway, the appearance of corruption and the possibility of actual corruption would exist.

Mr. Hiltachk stated that the voters have said that a contribution of \$3,000 is not corrupt and that it does not matter who delivers the contribution.

Chairman Getman stated that the only reason a lobbyist would want to deliver the contribution would be to indicate to the official that the lobbyist can deliver campaign monies and the official should take that into account when making a decision.

Mr. Hiltachk disagreed with the Chairman's premise. He believed that the lobbyist would deliver the contribution for practical purposes.

Chairman Getman pointed out that a corporation writes many checks to vendors every day, and questioned why the campaign contribution can only be delivered by the lobbyist.

Mr. Hiltachk responded that the premise the Chairman articulated was uncommon. He believed that sweeping all lobbyists into the prohibition ignored the statute. He stated that, if the issue was about a policy, the legislature or the voters should determine the policy because it involved statutory interpretation. The statute uses terms that are used in three other statutes in Proposition 34 and those terms should be interpreted consistently. He believed that the question was not about the lobbyist's First Amendment rights, but about the donor's First Amendment rights.

Chairman Getman stated that it is not about the contributor's rights because the contributor does not have a constitutional right to get a contribution delivered in a particular way. Version 1 would not interfere in any way with the ability of the contributor to get the contribution to the candidate's committee.

Mr. Hiltachk responded that the Chairman may be right, but noted that the terms should be interpreted consistently. He believed that "from" meant "from the lobbyist's personal funds."

Chairman Getman agreed with that definition of "from" when it was used in a previous statute that read, "from, through or arranged by." However, it was not used in that manner in the current statute.

Mr. Hiltachk agreed, noting that the Proposition 34 language included the word "from" and removed the language meaning "transmission."

Chairman Getman read from Mr. Hiltachk's letter a statement indicating that the Legislature and voters are presumed to know the meaning of the defined terms when those defined terms are used in the legislation. She asked Mr. Hiltachk to cite a case supporting that statement.

Mr. Hiltachk responded that he would, noting that it is a normal rule of statutory construction.

Commissioner Swanson asked Mr. Hiltachk how the public would view a lobbyist handing a group of checks totaling \$30,000 to an official, even though each check was within the \$3,000 limit.

Mr. Hiltachk responded that the public would not make the distinction between the lobbyist doing the transaction and the non-lobbyist doing the transaction. If the Commission wanted to prohibit bundling, then it should be done through a statute.

Chairman Getman disagreed, noting that it would have a severe impact on the public confidence in government when the public reads about lobbyists sitting in bars and handing over checks during a significant decision-making period.

Mr. Hiltachk responded that it would have made no difference if the CEO of Oracle had handed over the check in that story, noting that it would have been perfectly lawful.

Chairman Getman explained that the statute very clearly prohibits an elected state officer from accepting a contribution "from a lobbyist."

Mr. Hiltachk responded that the statute does not give the Commission the leeway to prohibit the lobbyist from delivering the contribution because "from a lobbyist" is a defined term used in the same context as the contribution limit scheme.

Chairman Getman noted that lobbyists were treated differently under the "affiliated entities" rules, thereby acknowledging that the lobbyist contribution statute was different.

Mr. Hiltachk responded that it was not drafted in a different way. He did not believe that inserting the word "and" would create a separate statutory requirement, and noted that a single transaction uses the exact same words. If there was an intent to do something else, it should have been drafted differently.

Chairman Getman responded that the drafters of the initiative have not commented against the proposal in any way.

Mr. Tocher stated that there is a difference in the structure of §§ 85301, 85302 and 85303. The statutes themselves regulate lobbyists differently by segregating them from the general contributing public. Additionally, the language of § 85702 states that candidates and state officers may not accept a contribution from a lobbyist. Mr. Tocher compared the language of § 85702 with the language of § 85301, noting that the prohibition is contained in the first clause of § 85702. He believed that an interpretation of § 85702 is not binding on an interpretation of the scope of the prohibitions in §§ 85301, 85302 or 85303. He agreed that the voters do not make a distinction between the lobbyist delivering checks from several contributors versus the lobbyist's delivery of personal checks. He noted that IGA argued that there should be no distinction between delivery of personal contributions and delivery of somebody else's contributions if corruption or the appearance of corruption was the target of the statute. The court determined that it does prevent a lobbyist from making personal contributions. It is consistent, therefore, to prevent a lobbyist from delivering the contributions of others.

Mr. Tocher stated voters are charged with knowing only the information provided in the ballot materials. Nothing in the ballot pamphlet attempts to narrow an interpretation of the statute, and Mr. Tocher believed that Version 1 would be consistent with the voter intent.

Mr. Hiltachk suggested that a contribution limit, as it applies to lobbyists, would achieve the government's objective. The proposed ban was overly broad. He noted that no one said that his underlying premise was wrong during the litigation process, and everyone knew then that lobbyists could deliver contributions.

Chairman Getman commented that everyone agreed it was an irrational reading of the statute, and this was the rational result of losing the initial premise.

Mr. Hiltachk stated that the rational result, if preventing corruption is the goal, would be that no one with business before the Legislature should be making contributions.

Chairman Getman stated that the statute singled out lobbyists for a reason that courts have recognized.

Mr. Hiltachk conceded that he and the Chairman disagreed about what the statute said. He pointed out that the ballot arguments are ambiguous, and that the language, "...shall not receive any contribution from a lobbyist" referred to large, small or zero contributions from a lobbyist's personal funds.

Mr. Hiltachk asked that the Commission stay true to the statute. If the Commission chose to go beyond it, the policy questions posed by staff regarding delivery methods should be considered as if PACs were making the contributions for a nonprofit entity through their lobbyists.

Mr. Tocher pointed out that Mr. Hiltachk relied on the legal charge that voters are presumed to know certain things. He noted that courts use that legal fiction to ascertain intent in the absence of other evidence. In this case, however, he did not believe that there was an absence of the voter's intent. He suggested that the Commission consider which weighs heavier: the legal fiction or the history of the nearly 30 years of attempted regulation of this type of conduct and the manifest intent in the voter pamphlet materials to prevent "ANY" contribution from lobbyists.

In response to a question, Mr. Tocher stated that proposed Version 1 of regulation 18572.2(b)(2) would prevent a lobbyist from hand delivering a contribution made by the lobbyist's clients directly to the candidate. Version 1, subdivision (b)(1) gave the Commission the option of including or excluding the lobbyist's assistant from delivering the contribution.

Chairman Getman pointed out that subdivision (2) brought it down to whether the candidate knew or had reason to know that person was representing a lobbyist.

Commissioner Knox questioned whether there is a point at which the lobbyist's constitutionally protected advice to the lobbyist's client intersects with a possible regulation barring the lobbyist from delivering the money personally.

Mr. Tocher responded the Commission would have to be careful not to impinge on the contributor's right to make the contribution and the right of the lobbyist to advise the client about making a contribution. Communications between the client and the lobbyist are protected, and the regulation would not infringe on that. When the client is sending a contribution, it would not be considered "from" the lobbyist and would not be a violation of the proposed rule.

In response to a question, Mr. Tocher agreed that "transmittal" would require some physical action on behalf of the lobbyist, distinguishing it from the pure speech of advice.

Commissioner Downey stated that Version 1 would curb the monetary connection between lobbyists and candidates or office holders and construct a barrier between the governmental action and campaign financing. He believed that the Commission was charged with lessening the appearance of and actual corruption in government. He saw nothing to suggest that it be important for lobbyists to hand over contributions other than tradition. The only justification for the continued practice was corruption. He disagreed with Mr. Hiltachk's argument and believed that the Commission had the authority to adopt the regulation.

Commissioner Downey stated that no one presented a practical reason for not adopting Version 1, reducing the connection between campaign financing and governmental decision making.

Chairman Getman stated that it is hard to argue that the person whose job is to influence a government decision-maker should have the right, as part of that job, to personally deliver a campaign contribution check at the same time. She noted that no public official has argued that the lobbyist must deliver the contribution or it will interfere with their decision-making or their ability to run their campaign. She believed that the statute is susceptible to either interpretation. The Commission was interpreting Proposition 34 in the proposed regulation, and not attempting to create a rule dealing with a particular situation currently in the news. However, the Commission cannot ignore the realities when doing their job of interpreting the statute. She argued there is no legitimate reason why a lobbyist must deliver a contribution. The face-to-face connection between the lobbyist with the campaign contribution and the decision-maker leads to public doubt about the decision-making process.

Commissioner Knox agreed that Version 1 was within the parameters of the statute, but did not think it was the best reading of the pure language of the statute. He believed that the first and second parts of the statute intended to be mirrors of each other.

In response to a question, Commissioner Knox stated that the Chairman's reading of the ambiguity in the word "from" is a fair reading of the statute, but not the best reading of the statute.

Commissioner Downey noted that Senator Johnson might use that argument to accuse the FPPC of being a "toothless watchdog."

Chairman Getman stated that there was something different about the lobbyist looking the decision-maker in the eye and handing the campaign check over. That difference is the reason lobbyists want to do it. It is a way of transmitting a message that the lobbyist can deliver the contribution check, and others, and it should influence the official's decision-making. This would not be a total solution, but would remove the most potentially corrupting circumstance.

Commissioner Knox disagreed. He saw little difference between handing over a check or saying that the check is in the mail.

Chairman Getman responded that there would not be any harm in it.

Commissioner Downey moved adoption of Version 1, subject to further discussion regarding decision points.

Chairman Getman seconded the motion.

Commissioner Downey and Chairman Getman voted "aye." Commissioners Knox and Swanson voted "no." The motion failed by a vote of 2-2.

Commissioner Swanson stated that the Commission did not have the purview for Version 1 and that the public wanted the curtailment of influence and peddling of money by those who can influence the legislators. She saw no difference between handing over a check personally and putting the check in the mail. She did not believe that Version 1 would accomplish much.

Chairman Getman stated that, even if you cannot do much, you should do what you can.

Mr. Tocher presented Version 2, which would limit the scope of "acceptance from" to pertain only to contributions made from the lobbyist's personal funds.

Commissioner Knox moved that the Commission adopt Version 2.

Commissioner Swanson seconded the motion.

Commissioners Knox and Swanson voted "aye." Commissioner Downey and Chairman Getman voted "no." The motion failed by a vote of 2-2.

The meeting adjourned for lunch at 12:40 p.m.

The meeting reconvened at 2:06 p.m.

Item #4. Conflict of Interest Regulations Improvement Project: Adoption of Amendments to Regulation 18707.4, Public Generally - Appointed Members of Boards and Commissions.

Chairman Getman moved that the Commission adopt proposed regulation 18707.4.

Commissioner Knox seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried unanimously.

Item #6. CalPERS Reporting Regulations – Pre-Notice Discussion of Proposed Amendments to Regulations 18451 and 18452.

Commissioner Knox moved that the Commission approve the pre-notice regulations 18451 and 18452.

Commissioner Downey seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried unanimously.

Item #7. Proposition 34 Regulations: Pre-notice Discussion of Proposed Regulations 18544 and 18545, COLA for Campaign Contributions and Voluntary Expenditure Limits.

Chairman Getman announced that two technical corrections were recommended to the draft.

Executive Fellow Scott Burritt distributed a revised copy of regulation 18544, clarifying that the formula include contribution limits in effect January 1, 2001.

Commissioner Knox moved approval of the pre-notice regulation 18544 and 18545.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried unanimously.

Item #8. Annual Technical Clean-up Packet: Pre-notice Discussion of Proposed Amendments to Regulations 18110, 18401, 18404.1, 18540, 18705.4 and 18997.

Commissioner Swanson moved approval of the pre-notice amendments to regulations 18110, 18401, 18404.1, 18540, 18705.4 and 18997.

Commissioner Knox seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried unanimously.

Item #9. Campaign Disclosure Forms—Approval of 2002 Campaign Manual Addendum.

Commissioner Downey moved that the Commission approve the 2002 Campaign Manual Addendum.

Commissioner Knox seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried unanimously.

Item #10. June 2002 Work Plan Revisions.

There being no objection, the Commission agreed to proceed as proposed in the June 2002 Work Plan Revision.

Item #11. City of Los Angeles Secession Election.

Ms. Menchaca explained that staff has been working since 1999 with the Los Angeles Ethics Commission (LAEC), and other local entities including the Los Angeles County LAFCO, the State Association of LAFCOS and the Legislature to resolve questions involving the reporting of payments by persons who promote or oppose secession of the San Fernando Valley from the City of Los Angeles.

Ms. Menchaca outlined the history of the issue, noting that the LAEC asked the Commission to modify and codify the *Fontana* opinion. At that time, the Commission decided to work with the Legislature to amend the Cortese-Knox Local Government Reorganization Act to provide a framework for reporting activity, particularly lobbying, that occurs prior to a measure being placed on the ballot. Staff periodically reported to the Commission the status of the hearings to evaluate the program for its effectiveness.

Ms. Menchaca explained staff had recently received a number of requests for advice pertaining to the filing obligations of prospective candidates for the new city if the voters of Los Angeles approved the secession measure. Staff worked with the LAEC to formulate a fact sheet which will answer many of the questions from the public, and issued an advice letter to the LAEC supporting the conclusions summarized in the fact sheet. That information is available to the public. Ms. Menchaca summarized that the contribution limits do not apply in the secession matter, the filing officer is the LAEC, and candidates will have to file their first reports in July.

Ms. Menchaca reported that the LA LAFCO discussed the fact sheet and staff received no objections to the fact sheet from them. She pointed out that LA LAFCO was also working with the LAEC to resolve questions involving the administration of the election.

Ms. Menchaca anticipated that staff would be receiving more questions regarding this and the Hollywood secession and would continue to be responsive to those questions.

Chairman Getman stated that the cooperation between the FPPC and the City of Los Angeles has been great, and thanked staff for their work.

Ms. Menchaca added that Senior Commission Counsel Hyla Wagner will be responding to the public queries.

In response to a question, Ms. Menchaca stated that the City of Hollywood has a secession measure on the upcoming ballot.

Item #12. Motion to Vacate Default Decision, In the Matter of Signature Properties, Inc., FPPC No. 01/386.

Ben Davidian, from Bell, McAndrews, Hiltachk and Davidian, and on behalf of Signature Properties, stated that Signature Properties had a complete failure to communicate in this matter. They failed to properly report in a timely fashion and failed to properly address the concerns of the FPPC until a very late date.

Mr. Davidian explained that the lawyer representing Signature Properties was a new lawyer who put the case aside when he should not have. They thought that the nearly \$4,000 fine that Signature paid to the SOS addressed their failure to report, and did not react as they should have to the subsequent FPPC contact. Once they realized their error, they worked out a settlement proposal with Enforcement Division staff agreeing to a \$10,000 fine. After signing the settlement agreement Signature's General Counsel, Marc Stice, was told that staff would ask the Commission to take the default off the agenda and to approve the settlement stipulation at the next meeting. Staff requested that the settlement check for \$10,000 be sent to the FPPC by May 20, 2002. However, at the May 9, 2002 meeting, the Commission chose to enter the default order, noting that they had not yet received a check. Signature sent the check in as soon as they learned that they needed to send it in sooner than Enforcement staff indicated. They did not appear nor did they have counsel appear in their behalf at that meeting because they did not think it was necessary.

Mr. Davidian stated that Signature did everything wrong until the very end. He noted that his client did not know they could have asked Enforcement staff to reduce the amount of the fine by the amount paid to the SOS or could have asked the SOS to waive the fine if they paid the FPPC fine. Signature tried to make it right by coming to the FPPC and asking what they needed to do to fix it. If Signature had addressed the issue when first approached by the FPPC, the fine would have been much lower than the \$10,000 agreed upon by staff in the settlement.

Mr. Davidian stated that he had never seen a case where a default was taken after the respondent came forward to settle, but agreed that the Commission had the right to take the default. The respondent knew that the agreement had to be approved by the Commission. He asked the Commission to set aside the default decision and allow them to work with Enforcement Division on a settlement stipulation or go forward with a hearing on the case.

Mr. Davidian stated that a default on a company does not look good on the company's record. Signature wanted to work out a settlement to avoid that, and was very sorry for its errors. Signature was retaining a firm to do their contribution reporting for them and would make sure that the reporting is done correctly in the future.

Chairman Getman stated that the respondent did not work with the Enforcement staff until two days before the default decision was made. The default was based on conduct that occurred well before then. The Chairman detailed Enforcement Division efforts to work with the respondents

beginning on October 16, 2001. She noted that Mr. Meinrath could not predict what the Commission would decide with regard to the default decision at its May 2002 meeting.

Mr. Davidian clarified that Mr. Meinrath gave no guarantees regarding what the Commission would do at its meeting.

Chairman Getman noted that the respondent did not decide to do the right thing until two days before the Commission was scheduled to consider the default at its May 2002 meeting. She believed that was too late and did not believe that grounds for a motion to set aside the default decision had been met.

Mr. Davidian argued that Signature understood its mistake before the default was taken and tried to do what it needed to do at that point. They were not asking for absolution because they knew they did not deserve it. They were not asking for the same deal that they would have gotten had they responded in a timely manner. Their General Counsel made mistakes, but tried to fix it before the default was taken, readily accepting a good faith settlement proposal from Enforcement Division.

In response to a question, Commissioner Knox noted that the original settlement was sent to them in October 2001.

Mr. Davidian stated that the respondent simply did not deal with it in October 2001. The counsel for the respondent had no memory of having received the earlier stipulation. He noted that it might have made a difference if Mr. Stice had appeared at the May 2002 meeting to plead his case, but Mr. Stice did not think it would be necessary.

Commissioner Knox stated that the Commission took the default decision because they did not believe the respondent should be allowed to ignore the issue until two days before the default was heard.

Mr. Davidian responded that the Commission had the option of not taking the default and negotiating a different settlement. Staff was now aware of the \$4,000 fine that the respondent paid to the SOS, and that respondents do not generally pay a fine to two agencies.

Commissioner Knox questioned what the excusable neglect would be and what successful defense that the respondent would mount under § 473 if the case were being heard in the courts.

Mr. Davidian stated that those rules would not apply in this case, but noted that there would not be a default in the courtroom once the respondent made an appearance. He added that the respondent was not interested in going to a hearing but wanted to settle the case.

Chairman Getman stated that the Commission had the right to proceed on the default.

In response to a question, Mr. Davidian stated he would encourage the respondent to work with the FPPC. He stated that it would be hard to defend the case on the merits when the respondent did not do the reports on a timely basis. He noted that the respondent admits its mistakes.

Chairman Getman explained that considering a settlement stipulation at this point would impact the enforcement program and the ability of the enforcement attorneys to enforce the rules. The Commission should give the greatest consideration to the message they are sending if the respondent gets away with this behavior.

Mr. Davidian noted that, as Chairman of the FPPC, he never took a default against someone who voluntarily appeared before the FPPC even if they appeared on the day the default was considered. He believed that the Commission should always try to work with the respondent, and guessed that anyone who saw what happened in this case would not break the rules as Signature did.

Chairman Getman stated that the best way to make sure it does not happen again would be to let the default stand.

Mr. Davidian argued that the Commission would be making their point by agreeing to a settlement stipulation on top of the fine the respondent already paid to the SOS.

Chairman Getman responded that the FPPC would look foolish if they let someone engage in this level of behavior and then take a deal after-the-fact.

Mr. Davidian stated that he would be more concerned about taking the default when a good-faith settlement proposal was before them. The Commission should want people to admit their mistakes and pay the price, even though they do it late. A default should be reserved for those cases where the respondent never works with the Commission.

Chairman Getman stated that a default should also be utilized in those cases where limited FPPC resources have to be spent chasing down the respondent for a length of time.

Mr. Davidian responded that the resources were not as great as they would have been had the case gone to hearing. The actual FPPC expenditures were more than compensated by the amount of the stipulation. He believed that it would send a message discouraging this type of behavior.

In response to a question, Mr. Davidian explained that Signature Properties is a development company from Pleasanton.

In response to a question, Mr. Meinrath noted that the Enforcement Division takes no position on whether respondents should be granted relief from the default order. He pointed out that the Commission could vacate the default decision and grant a hearing on a showing of good cause as a remedy for the request for relief from default. This appears to be what the respondent has requested. They could also, under §11521, order a reconsideration of all or part of the case on its own motion or on a petition of any party. If the Commission reconsiders, they can refer the case back for a hearing on the fine only and set aside the default. He noted that the statute is not perfectly clear with regard to reconsideration of a default.

Mr. Davidian stated that they would amend their motion to include a motion for reconsideration if necessary. He noted that he had never seen a case like this before, and that there was not a lot of case law on the issue.

Items #13, #14, #15, and #16

The following items were approved on the consent calendar:

Item #13. In the Matter of Reginald Fair and R. Fair and Associates, FPPC No. 00/735. (12 counts).

Item #14. *In the Matter of Jan Wasson-Smith, FPPC No. 00/380.* (2 counts).

Item #15. *In the Matter of Mike Cross, FPPC No. 01/381.* (2 counts).

Item #16. Failure to Timely File Late Contribution Reports - Proactive Program.

a. *In the Matter of Peter & Judith Wolken, FPPC No. 2002-324.* (1 count).

b. *In the Matter of National Society of Professional Engineers, FPPC No. 2002-327.* (1 count).

Item #17. Legislative Report.

Executive Fellow Scott Burritt distributed a letter of support regarding SB 183, which would amend the retirement formulas for Unit 7 Investigators. It would provide FPPC investigators with an increased retirement formula that other state agency investigators already have. The FPPC loses investigators to those agencies, and passage of this bill might help the FPPC retain experienced investigators. He asked for the Commission's ratification for sending the letter.

Commissioner Swanson moved approval of the letter.

Commissioner Knox seconded the motion.

There being no objection, the letter was ratified.

AB 1791 (Runner)

Mr. Krausse explained that this bill was originally the SOS 10-point plan on ethics, and had been amended down to one provision, changing from 30 days to 10 days the amount of time a new employee would be allowed to file a Statement of Economic Interest. Currently, the bill applies only to state employees. Staff recommended a neutral position on the bill. Local agencies in Los Angeles and San Francisco have indicated that there would be problems complying with the ten-day requirement. The author contends that the form could be given to the person at the time the position is offered to them, which would give them more than 10 days.

In response to a question, Mr. Krausse stated that the amended bill is now in print.

Mr. Krausse explained that members of the Senate Elections Committee discussed the FPPC stipulation against the Department of Water Resources and the fine that was levied in that case for failure to meet filing officer obligations. There was still some misunderstanding about the fact that the stipulation only addressed the failure of the state agency to fulfill its duty as a filing officer and did not address the failure of individuals to file. Once that was made clear, two committee members still wanted to try to amend the law to provide greater individual liability. It was suggested that either the Personnel Officer or the Director of the agency would have additional individual liability for failure of the agency to meet its filing officer obligations. Staff would be meeting with them again and asked for direction from the Commission.

Chairman Getman questioned whether it was appropriate for the Commission to provide feedback at this point. She suggested that staff listen to ascertain whether it was a real proposal or a political proposal and whether it would be helpful or harmful. Each division would need to analyze the bill.

Mr. Krausse noted that an earlier form of the bill included a prohibition on the FPPC levying a fine against an agency, and that the Commission had taken a position against that provision.

Mr. Krausse asked what position the Commission wanted to take on the shift from 30 days to 10 days.

Commissioner Downey stated that he thought the 10 days seemed too short and suggested the the Commission oppose the bill.

Commissioners Knox, Swanson and Chairman Getman agreed. Chairman Getman noted that the Commission was much more interested in accuracy.

AB 3051 (Papan)

Mr. Krausse explained that AB 3051 deals with disclosure in independent expenditure campaigns. The bill has a number of problems involving constitutional and other issues that the FPPC could end up defending in court. Staff has brought those issues to the author's attention. Mr. Krausse recommended that the Commission take a neutral position on the bill until they see how the bill will be amended.

There was no objection to taking a neutral position.

AB 2366 (Dickerson)

Mr. Krausse reported that AB 2366 would provide that an official who receives income of less than 1% from someone who is appearing before them can still participate in a decision involving that person, even if that income is over the \$500 disqualification level, providing the official's jurisdiction has 10,000 or fewer persons. Staff believes that it is a very bad bill. Both the Assembly and Senate Elections Committees have suggested that the FPPC consider incorporating the change in regulations since the current rule is in regulations. If the FPPC

chooses not to do so, Mr. Krausse suggested that the Commission consider asking the Governor to veto the bill since there is a good chance that the bill will be approved in the Legislature.

Chairman Getman stated that she would oppose doing anything by regulation because there would be no regulatory authority since it would not further the purposes of the PRA. She said she had no problem asking for a veto.

Commissioners Downey, Knox and Swanson agreed.

Mr. Krausse stated that he would let the committee know the Commission's decision.

Commissioner Knox stated that, at least once a month, the Commission considers a regulation that bridges some inconsistency or ambiguity in the statute. He asked whether and when the Commission could develop a list of items that they might ask the Legislature to act on to make Proposition 34 and the PRA better. He noted the discussion in the morning relating to § 85702, where the Commissioners agreed the statute could be read either way as to what a lobbyist can do, and suggested that there might be a consensus on the Commission as to a policy to recommend to the legislature. He added that Senator Johnson indicated in recent correspondence that he would be happy to work with the Chairman on legislative reform.

Mr. Krausse responded that it was perfectly appropriate for the Commission to request any adjustments to the statutes at any time. He explained that Senator Johnson has a number of vehicles in both houses which could address the issues, or any other legislator could be approached.

Chairman Getman explained that the Commission traditionally considers legislative proposals generated by staff or Commissioners in the fall of each year. Additionally, the Commission has, at times, considered legislative proposals on an ongoing basis when a problem had arisen. She reminded the Commission of the "foreign nationals" issue, wherein the Commission asked the Legislature for a solution for an intractable statutory problem.

Mr. Krausse provided another example involving the disclosure of cumulative contributions in advertising disclosure discussed at the May 2002 meeting. He stated that the Commission must act before 12 days of the end of the legislative session. The Legislature will go into summer recess in mid-July, and will return in mid-August and will adjourn the session in mid-September. He suggested that there is enough time to get changes made, but noted that staff would need time to develop a proposal. If the Commission chose to identify § 85702, or those issues identified in the recent correspondence, and providing an allowing author can be found, there would be enough time to get changes enacted.

Chairman Getman stated that she would be happy to send a letter to Senator Johnson asking that he develop legislation placing a cap on the contributions being made and received by current legislators and prohibiting legislators or other government officials from receiving contributions from lobbyists.

In response to a question, Ms. Menchaca stated that the Commission could direct staff to draft a proposal. The actual proposal could be brought to the Commission, and staff would need to move quickly.

Chairman Getman suggested that the Commission could ask her to draft a letter asking Senator Johnson whether he would be willing to explore the possibilities on the two points. Commissioner Knox agreed.

Chairman Getman explained that the two points would be to ask the Legislature impose a cap on the contributions that members can receive into their pre-2001 election accounts, and to ask the Legislature change § 85702, perhaps in the way Mr. Hiltachk suggested, with subdivisions (a) and (b). Subdivision (a) would be specifically directed toward lobbyists delivering contributions, and subdivision (b) would be directed toward lobbyists being prohibited from making contributions from their own personal funds.

In response to a question, Chairman Getman moved that she be authorized to send a letter to Senator Johnson asking him if he would be willing to engage in discussions on those two points.

Commissioner Knox seconded the motion.

Commissioner Swanson asked for clarification of "discussions."

Chairman Getman responded that the letter would open the door to substantive discussions with Senator Johnson to see if Senator Johnson would be willing to introduce a bill addressing the two points.

Commissioner Knox pointed out that Senator Johnson had offered to address FPPC issues.

Commissioner Swanson asked whether the motion would include having someone else work with Senator Johnson if he chooses to ask someone else to carry his banner.

Chairman Getman responded that it would.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Item #18. Executive Director's Report.

Mr. Krausse introduced Jenny Eddy, a new Enforcement Division Attorney, and Galena West, a new Legal Division attorney.

Item #19. Litigation Report.

The Commission took the Litigation Report under advisement.

The Commission returned to closed session to discuss item #20(a) and item #21 at 3:15 p.m.

The Commission reconvened the public session at 3:45 p.m.

Item #20(a). Deliberation on Motion to Vacate Default Decision, In the Matter of Signature Properties Inc., FPPC No. 01/386 (Gov. Code section 11126(c).)

Chairman Getman announced that the Commission considered the Matter of Signature Properties and denied the motion to vacate the default decision by a vote of 4-0. She stated that the default decision would stand.

The Commission meeting adjourned at 3:47 p.m.

Dated: July 11, 2002

Respectfully submitted,

Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Getman